

Thank you for this opportunity to respond to the revised Industrial Stormwater General Permit. As the lead appellant in the appeal of the 2000 permit, we appreciate the amount of time you and others at the Department of Ecology (Ecology) have spent revising and improving this permit.

Although stormwater is the largest source pollutants impairing waterways in or draining into Puget Sound, it is still virtually unregulated in Washington State. Stormwater discharges from industrial facilities have been permitted since November 1992, yet compliance with water quality standards has never been required. Ecology has assumed that stormwater runoff from industrial facilities implementing Best Management Practices (BMPs) from the Stormwater Management Manual (2001) “should generally comply with water quality standards and protect beneficial uses of the receiving waters”. Yet, Ecology also states in the next sentence “compliance with the manual may not ensure compliance with water quality standards”.

The Puget Soundkeeper Alliance’s (PSA) interest in stormwater regulation is significant. Last fall, PSA, dedicated its limited resources to protecting and preserving Puget Sound by focusing its efforts on obtaining stormwater permits that comply with water quality standards and meaningfully advance stormwater regulation to stop the decline in water quality in the Puget Sound ecosystem. PSA has also dedicated its resources to monitor stormwater permit implementation and compliance and will continue to enforce these permits under Clean Water Act as needed.

### **General Comments**

PSA applauds Ecology’s inclusion of compliance with water quality standards as a requirement of this permit. Unfortunately, the permit provides significant loopholes that allow virtually every industrial facility numerous ways to avoid actual compliance with water quality standards. Standard mixing zones, compliance schedules in 303 (d) listed waters, no exposure certification, and stormwater manual requirements are just some of the opportunities provided by Ecology to these industrial facilities.

PSA also applauds Ecology’s inclusion of monitoring and reporting requirements as a way to begin to identify and quantify stormwater pollutants and document harm to receiving waters. However, the monitoring requirements are significantly watered down from the requirements in the EPA’s NPDES Multi-Sector General Permits for Storm Water Discharges Associated with Industrial Activities. Why is Ecology requiring monitoring of only certain pollutants?

Finally, PSA is concerned that the permit is framed based on Ecology’s limited financial and staff resources, rather than by its mission to “protect, preserve and enhance Washington's environment, and promote the wise management of our air, land and water for the benefit of current and future generations” and “prevent pollution, clean up pollution, and support sustainable communities and natural resources”. Lack of funding or staff resources does not excuse Ecology from implementing its mission or achieving its goals.

Ecology’s failure, in this permit, to make determinations for mixing zones and no exposure certificates provide entirely too much slack to industrial facilities that have shown little interest in complying with the 1995 permit. According to the permit Fact Sheet no more than 25% of industrial facilities can be considered in compliance with BMPs from the 1995 permit. And, according to PSA’s review of 86 stormwater permittees in the Duwamish River, only 34% (29) had a Stormwater Pollution Prevention Plans (SWPPPs) as of March 21, 2002 and only 6% (5) had completed and submitted the required wet and dry season inspection reports.

PSA believes that the burden of proof should be on the permittee to demonstrate AKART and no exposure and that Ecology make the appropriate determinations that AKART is being achieved that there is no stormwater exposure to pollutants.

## **Specific Comments by Permit Section**

### **S2 Coverage Requirements**

#### **S2.B.3.c. New Facilities**

PSA supports Ecology's request that all new facilities prepare and submit a SWWPP prior to commencing their industrial activities. This provides the public with the opportunity to evaluate exposure, best management practices, storm drain locations, receiving waters and other information necessary to determine compliance with the permit.

PSA recommends that Ecology add a paragraph "d." to S2.B.3 that requires existing facilities to submit and maintain a "current" copy of their SWPPPs at the appropriate Ecology region. PSA has reviewed all of the SWPPPs sent to Ecology last fall from our request in the Duwamish River corridor. Out of the 86 SWPPPs requested, only 29 were sent to Ecology. Of these 29, only 17 submitted inspection reports, and only 5 submitted a reasonable number of inspection reports to consider the SWPPPs in compliance with the 1995 permit requirement.

There is no way that PSA will be able to assess these SWPPPs for compliance with the 2002 permit, unless PSA makes another public disclosure request for those same 86 permits. And, PSA is not just interested in the Duwamish River; we cover all of Puget Sound. It will be much more efficient if a "current" copy of the SWPPPs is required to be maintained at the appropriate regional offices. Visual inspections should be included with these "current copies."

Ecology must insure that the SWPPPs, the "heart and soul" of the 2002 permit, are meaningful and the only way to do this is through requiring the submittal and maintenance of a "current" SWPPPs on file.

#### **S2.C Is There a Compliance Schedule for Developing and Implementing the SWPPP?**

PSA recommends that section S2.C.2.a. and S2.C.2.b be modified to either delete the "unless otherwise authorized" or require public review of Ecology authorized compliance schedules prior to approval.

#### **S2.D What are Public Notice Requirements?**

PSA recommends that the permit require a copy of the public notice be sent to Ecology. Ecology should then post it in an appropriate location on its web page so interested parties can more easily track new facilities requesting permit coverage, facilities with significant process changes or additions or modifications to mixing zones.

It is unreasonable to expect that interested members of the public will be able to subscribe to every major publication in the state to monitor the permit process. Providing this information on the Ecology web page, even in an abbreviated form, would provide a significant service not

only to the public, but to Ecology regional offices tracking permits in their watersheds. This will improve public scrutiny and result in better compliance and enforcement.

If Ecology does not have the resources to implement this, perhaps a list of interested parties could be provided by Ecology to the facilities requesting the permit or modifications.

### **S2.F Does Coverage Preempt Local Government Requirements?**

PSA strongly supports the language in this section, which requires the permittee to comply with the most restrictive requirements where the permit and local government requirements overlap.

## **S3. Discharge Limitations**

### **S3.D Stormwater Discharges to Impaired Waterbodies**

PSA strongly supports the permit language in this section that requires compliance with water quality standards for new facilities and significant process changes (S3.D.1) and existing facilities (S3.D.2). This is a tremendous step forward towards regulating stormwater in the state.

PSA recommends that Ecology clarify that permittees must comply with the State's water quality standards for each pollutant causing a violation at the location named on the state's "current" 303(d) list. The draft permit language just says "the State's 303 (d) list." The current 303 (d) list is dated 1998 and it is expected that a new 303 (d) list will be published during the life of this permit. This list will contain new impaired waterbodies and new pollutants. Permittees should be required to modify their activities based on the "current" 303 (d) list.

#### **S3.D.2 Existing Facilities**

PSA does not support the inclusion of compliance schedules for impaired waterbodies in this permit. In addition, the compliance schedule never actually requires compliance during the life of this permit. Five years after a permittee exceeds effluent limits in an impaired waterbody, the permittee must only prepare a full report, in its SWPPPs, of the actions it has taken and it plans to take to achieve compliance. It should be noted that this report is not required to be submitted to Ecology, nor does the public have access to this important information without making a public disclosure request.

PSA recommends that this compliance schedule be deleted from the final permit.

### **S3.E Mixing Zone Descriptions**

PSA does not support the use of mixing zones to achieve water quality standards. However, given that mixing zones are legal under state law, PSA believes that permittees and Ecology should be required to follow the provisions of WAC 173-201A-100.

This section of the permit allows every permittee to obtain a standard mixing zone to insure that they do not have to comply with water quality standards at their point of discharge. In order to achieve a mixing zone the permittee is required to only check box on a one-page application form certifying that they are implementing AKART and are protecting beneficial

uses of the receiving water. Ecology approves the mixing zone if the permittee does not receive notification from Ecology. Coverage under the permit automatically begins the 31<sup>st</sup> day after Ecology received the permit, the 31<sup>st</sup> day after the public comment period or the effective date of the permit depending upon, which ever date is the latest date.

PSA believes that the burden of proof must be on the permittee to obtain a mixing zone. Documentation supporting that the permittee has fully applied AKART should be submitted to Ecology to make the required determination as required by WAC 173-201A-100. Ecology should not grant a mixing zone “unless the supporting information clearly indicates the mixing zone would not have a reasonable potential to cause a loss of sensitive or important habitat...”

There is also, no way in this process to determine if mixing zones are overlapping, or whether a barrier “to the migration or translocation of indigenous organisms” has been created which could cause harm to the ecosystem.

PSA recommends that the mixing zone form be modified to provide the substantive information Ecology will need to determine whether or not a mixing zone is appropriate and that Ecology be required to make this determination prior to granting the mixing zone.

If Ecology does not have the resources to make mixing zone determinations, then it should not allow mixing zones in the permit. How else can Ecology legitimately achieve its mandate to “protect, preserve and enhance Washington's environment” and “prevent pollution, clean up pollution, and support sustainable communities and natural resources”?

#### **S4 Monitoring Requirements**

PSA strongly supports the inclusion of monitoring requirements in this permit as a way to begin to collect the data needed to determine the need for future stormwater effluent limits and determine whether implementing best management practices are achieving compliance with water quality standards. PSA is particularly supportive of the quarterly monitoring requirement, based on our experience with the Boatyard General Permit, which also requires quarterly monitoring.

PSA was disappointed to see that Ecology has not included the minimum monitoring requirements used in the EPA's Multi-Sector General Permit. Our section by section discussion is below.

PSA recommends that the results of visual inspections (both quarterly and the one dry season inspection) be submitted to Ecology like the discharge monitoring reports. This is an important compliance component of the permit and is used to determine SWPPP BMPs. PSA's experience with the Duwamish River SWPPPs is that very few facilities are conducting those inspections, likely because they have not been required to submit them. This will also help reduce time spent on public disclosure requests when PSA monitors permit compliance.

##### **S4.A.2 Stormwater Sampling**

It should be clearly stated here that benchmark values are not water quality standards.

PSA is not certain whether the permit requires a facility that has achieved consistent attainment, but has requested a modification for significant change in process, to begin

stormwater sampling again once the new process has been implemented. If the permit does not cover this situation it should be modified to do so.

#### **S4.A.3 Additional Metal Sampling**

It is unclear why Ecology has significantly changed the monitoring requirements from the EPA's Multi-Sector General Permit. Why were iron, cadmium, and total suspended solids removed from this draft of the permit? PSA recommends that Ecology add back to the list of parameters with their corresponding benchmark values iron (1.0 mg/L), cadmium (15.9 mg/L) and total suspended solids (100 mg/L).

#### **S4.B. 1 Timber Product Industry, Paper and Allied Products**

Why were COD, total suspended solids, arsenic, copper, and debris 1-inch in size or less removed? PSA recommends that Ecology add back the following parameters and benchmark values: COD (120.0 mg/L), total suspended solids (100 mg/L), total arsenic (168.54 mg/L), total recoverable copper (63.6 mg/L) and hardness (as Ca/CO<sub>3</sub>).

#### **S4.B.3 Chemical and Allied Product's, Food and Kindred Products**

Why were ammonia, total suspended solids and COD removed? PSA recommends that Ecology add back into the permit the following parameters and benchmark values: ammonia (19mg/L), total suspended solids (100mg/L) and COD (120 mg/L).

#### **S4.B.4 Primary Metals, Metals Mining, Automobile Salvage, Scrap Recycling, Metals Fabricating**

Why were aluminum, iron, cadmium, total suspended solids and COD removed? PSA recommends that Ecology add back into the permit the following parameters and benchmark values: aluminum (750 ug/L), iron (1.0 mg/L), cadmium (15.9 ug/L), total suspended solids (100mg/L) and COD (120 mg/L).

#### **S4.D Facilities Discharging to 303 (d) Listed Waterbodies or Subject to TMDL Determination**

PSA recommends that the "current" 303 (d) list of parameters by waterbody be sampled by facilities discharging into these waterbodies.

### **S5 Reporting and Recordkeeping Requirements**

PSA supports Ecology's effort to collect electronic submissions of discharge monitoring reports as long as the issue of providing a legal signature is resolved and this information is as readily available for public review as the current paper copies of DMRs. In addition, PSA supports Ecology's desire to make these DMRs available for public review on the Ecology web page. This will provide the public with significant opportunities to review permit compliance and reduce Ecology staff time in pulling permit files for public review.

### **S6 "No Exposure" Certificate**

Ecology must make a determination for "no exposure" certificates. The permit currently allows Ecology to make a determination if it does not respond in writing within 60 days of the

submittal of a no exposure form. Again PSA fails to see how Ecology can accomplish its mission without actively making determinations about issues related to water quality.

## **S7 Compliance with Standards**

PSA supports the requirement that permittees must comply with water quality standards, sediment management standards, ground water quality standards and human health-based criteria in the national Toxics Rule. This is a significant step forward from the 2000 permit, which stated that compliance with water quality standards was the ultimate goal.

### **S7.A**

This section states that Ecology will apply a mixing zone where authorized in S3.E and that “compliance with surface water quality standards shall be determined after consideration of available dilution.” It is not clear what available dilution is or how Ecology will determine compliance. There is no sampling of the mixing zone required and no calculation of dilution factors required prior to receiving a standard or expanded mixing zone. Given that this is a one-size fits all permit, there is also no relationship between the discharge from a facility and the size of the mixing zone allowed. How will Ecology enforce compliance with this permit?

PSA recommends that this section be clarified to detail how Ecology will use dilution to determine and enforce compliance with water quality standards.

### **S7.C**

This section is illegal and PSA recommends that it be deleted. The Clean Water Act does not allow Ecology to excuse permit violations because a stormwater treatment system does not fully function during a storm that exceeds the water quality design storm. This is particularly critical since the design storm is only a 6-month, 24-hour storm event.

## **S9 Stormwater Pollution Prevention Plan (SWPPP) for Industrial Facilities**

### **S9.A General Requirements**

#### **S9.A.3 Public Access**

Again, PSA requests that this section be reworded to require Ecology to maintain a “current” copy of the SWPPPs for each industrial facility at the appropriate Regional Office. Current should be defined to include visual inspection reports and all modifications to the SWPPPs. It is PSA’s intent to monitor facility compliance with this permit on a regular basis. We would like to avoid making public disclosure requests for watersheds we are ready to monitor.

#### **S9.A.4 Modifications**

This section contains additional “unless authorized by Ecology” language that, allows permit modifications to occur on an Ecology determined compliance schedule that is no subject to

public review. Compliance schedules and permit modifications should be subject to public review and comment or the “unless authorized” language should be deleted.

#### **S9.A.5.b Applicability of current and Future Editions of the Stormwater Management Manual**

This section allows existing permitted facilities that comply with water quality standards to use the 1992 version of the stormwater management manual as the basis of their BMPs. The problem with this, is that under the permit there is no way to determine compliance with water quality standards. The practical result is that no industrial permittee will have to comply with the BMPs in the current 2001 manual. The other problem is that the permittees are supposed to have implemented AKART before requesting a mixing zone. The 2001 Western Washington Stormwater Manual is considered AKART, but the ten-year-old 1992 manual is not. How can Ecology legally excuse permittees from implementing AKART?

PSA recommends that the permittees all be required to implement the BMPs from the current 2001 edition of the Stormwater Manual.

#### **S.9.A.6 Other Pollution Control Plans**

When permittees submit their SWPPPs to Ecology, any plans incorporated by reference should be submitted to Ecology as well, so both Ecology and the public have full access to the information used to create and modify the SWPPPs.

#### **S.9.B SWPPP Contents and Requirements**

The 1995 Industrial Stormwater General Permit had a requirement for the SWPPP to contain a certification by a responsible official that the facilities stormwater discharges had been investigated for the presence of non-stormwater discharges. Why has this requirement been deleted? This dry season inspection and certification seems like an important piece of information for the facility, Ecology and the public. Based on my review of the 29 SWPPPs submitted as a result of my request on the Duwamish River, few of these inspections have occurred.

#### **S9.B.3.b and S9.B.5**

The 2001 Western Washington Stormwater Manual should be referenced in both of these sections. It is unclear which version is required.

Thank you for this opportunity to provide comments. We request that you seriously consider the changes in the permit we have proposed.